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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,082	08/21/2003	Joseph A. Luongo	WAA-266 C1	6928
7590	07/27/2006		EXAMINER	
Anthony J. Janiuk, Esq. Waters Corporation Legal Department 34 Maple Street Milford, MA 01757			FREAY, CHARLES GRANT	
			ART UNIT	PAPER NUMBER
			3746	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/645,082	LUONGO ET AL.
	Examiner Charles G. Freay	Art Unit 3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-4, 8, 9, 29-32, 36 and 37 is/are allowed.
- 6) Claim(s) 5-7, 10-28, 33-35 and 38-56 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 12/2004 and 12/2005
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 12/2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Priority

Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed as PCT/US02/06540 on March 1, 2002. A claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said application, since the United States application was filed more than twelve months thereafter.

Claim Objections

Claims are objected to because of the following informalities:

in claim 1 line 7 after "in" "a" should be inserted;

in claim 3 line 2 "in" should be "is";

in claim 9 line 3 "form" should be 'from';

in claim 13 line 1 "on" should be "one"

in claim 15 line 8 after "in" "a" should be inserted;
in claim 17 line 2 "in" should be "is";
in claim 23 line 3 "form" should be "from";
in claim 27 line 1 "on" should be "one";
in claim 34 line 5 after "signal to" "a" should be inserted; and,
in claim 43 line 8 after "in" "a" should be inserted.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-7, 10-28, 33-35 and 38-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5-7 and 33-35 are vague and indefinite because in the last two lines of claims 5 and 33 the control means is said to send "a signal to said first motor and second motor". This limitation sets forth that a single signal is sent to each of the motors. It is clear from the disclosure that the controller sends a signal to the first motor and another signal to the second motor.

Claims 10 and 38 are confusing because as worded it is unclear if the first and second inlet valves are the two inlet valves earlier mentioned in the claim. It is also

unclear if the first and second outlet check valves are the two outlet valves earlier mentioned in the claim.

Claims 14 and 42 are vague and indefinite because they set forth, in line 2, that the close signal is sent to “said outlet valve”. It is the switchable valve which receives a close signal and the outlet valves have been disclosed as check valve (which are pressure responsive and do not normally receive a signal).

Claims 15-28 and 43-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite because the claims set forth a method of testing the performance of a pump but either have no method steps set forth (claims 43-56) or have only a single method step (mention in the last lines of claim 15). It is clear upon review of the claims that the method claims are a rewrite of the apparatus claims with the preamble changed from reference to a pumping apparatus to a method of testing a pump apparatus. The apparatus claims set forth the control aspects of the claimed invention in means plus function form and the method claims seem to be relying on the functional recitations as method steps. However this creates confusion. See for example dependant claims 19-22 which each set forth the phrase “wherein in the test mode said control means ...”. It is unclear from such a phrase if the limitations which follow therefrom are intended to further limit the structure performing the method or if the function statements are supposed to be additional method steps. This phrase is additionally confusing because the single method step set forth is “operating the

apparatus in test mode". The examiner also notes that in the second to the last line of claim 15 "steps" should be "step" since only a single step is set forth.

Allowable Subject Matter

Claims 1-4, 8, 9, 29-32, 36 and 37 are allowed.

Claims 5-7, 10-14, 33-35 and 38-42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 15-28 and 43-56 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lawless et al and Schuh disclose methods of testing for defects in pumps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Charles G Freay
Primary Examiner
Art Unit 3746

CGF
July 20, 2006